

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

CITGO PETROLEUM CORPORATION,)	
)	
Plaintiff,)	
)	MISC. CIVIL ACTION NO. _____
v.)	
)	
ROBERT W. AGEE, INC.,)	Judgment from the United States District
)	Court for the Southern District of Texas
Defendant.)	Civil Action No. 4:15-cv-00886

PLAINTIFF CITGO PETROLEUM CORPORATION'S
MOTION TO COMPEL

Pursuant to Rule 37 of the Federal Rules of Civil Procedure, Plaintiff CITGO Petroleum Corporation ("CITGO") moves the Court for an order compelling Defendant Robert W. Agee, Inc. ("Agee, Inc.") to respond to Plaintiff's First Discovery Requests in Aid of Execution Directed to Defendant ("Requests"). In support, CITGO would show the Court as follows:

I. INTRODUCTION

1. CITGO seeks to compel discovery from Agee, Inc.
2. On July 22, 2015, a default judgment for \$157,258.87, plus pre- and post-judgment interest was entered in favor of CITGO against Agee, Inc. in the Southern District of Texas. *See* Exhibit A.
3. CITGO has sought to identify Agee, Inc.'s assets and to execute the judgment in CITGO's favor. On September 8, 2015, in an effort to execute the judgment, CITGO registered the judgment in the U.S. District Court for the Middle District of Tennessee. *See* Exhibit B. CITGO thereafter has sought to identify executable assets owned by Agee, Inc. In February 2016, the U.S. Marshals Service in the Middle District of Tennessee served a writ of execution in

CITGO's favor for all bank accounts held by Agee, Inc. at US Bank. As of the present date, Agee, Inc. has not satisfied the judgment in any respect.

4. As a result, on May 23, 2016, CITGO served Agee, Inc. with discovery requests in aid of execution. *See* Exhibit C. These Requests are an attempt to gather information to assist CITGO in its efforts to execute the July 22, 2015 judgment.

5. On June 17, 2016, CITGO attempted to contact Agee, Inc. by certified mail to inquire whether Agee, Inc. intended to respond to CITGO's Requests. *See* Exhibit D.

6. As of June 28, 2016, CITGO has received no response from Agee, Inc. with respect to CITGO's discovery requests. In sum, as of the date of this filing, Agee, Inc. has chosen to ignore the July 22, 2015 judgment.

II. ARGUMENTS AND AUTHORITIES

7. The Federal Rules of Civil Procedure permit a judgment creditor to obtain discovery from any person, including the judgment debtor, as provided by the Federal Rules of Civil Procedure. FED. R. CIV. P. 69(a)(2). Therefore, a judgment creditor may obtain discovery from a judgment debtor of any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case. *Id.* at 26(b)(1), 69(a)(2).

8. In the event that a party does not cooperate with discovery pursuant to the Federal Rules of Civil Procedure, a party may move for an order compelling discovery. *Id.* at 37(a)(1). Such motion may be made under various circumstances, including if (i) "a party fails to answer an interrogatory submitted under Rule 33" or (ii) "a party fails to produce documents or fails to respond that inspection will be permitted—or fails to permit inspection—as requested under Rule 34." *Id.* at 37(a)(3)(B).

9. If a party fails to obey an order to provide discovery, the Court where the action is pending may issue further just orders, including treating the failure to obey the Court's order as contempt of court. *Id.* at 37(b)(2)(A).

10. Here, CITGO has served Agee, Inc. with discovery requests pursuant to Federal Rule of Civil Procedure 69(a)(2), including interrogatories under Rule 33 and requests for production under Rule 34.

11. Despite CITGO's attempt to contact Agee, Inc. regarding the Requests, Agee, Inc. has declined to respond to the Requests or to CITGO's correspondence.

12. As a result, CITGO asks that the Court issue an order compelling Agee, Inc. to respond to CITGO's Requests.

III. CONCLUSION AND PRAYER

For the reasons set forth above, CITGO respectfully requests that the Court grant its Motion to Compel and compel Agee, Inc. to respond to Plaintiff's First Discovery Requests in Aid of Execution Directed to Defendant. CITGO has incurred expenses in preparing and filing this motion to obtain relief. Pursuant to Federal Rule of Civil Procedure 37(a)(5), CITGO is entitled to reasonable expenses incurred in making this motion, including attorneys' fees. CITGO further moves for any such other and further relief to which it may be justly entitled.

A proposed order is attached for the Court's consideration.

Dated: June 28, 2016

Respectfully submitted,

s/ Benjamin M. Katz
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*Counsel for Plaintiff CITGO Petroleum
Corporation*

STATEMENT OF CONFERENCE

I hereby certify that on June 17, 2016, in compliance with Local Rule 37.01(b)(3), undersigned counsel for Plaintiff in good faith attempted to confer with Defendant in an effort to obtain discovery without court action.

s/ Benjamin M. Katz

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Motion has been sent to the Defendant via certified mail this 28 day of June, 2016, at the following address:

Robert W. Agee, Inc.
19 Depot St.
Sparta, TN 38583-1836

s/ Benjamin M. Katz

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